

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Harper's Application [2015] NIQB 49

**IN THE MATTER OF AN APPLICATION BY HARPER
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

STEPHENS J

[1] I give this short ex tempore judgment in relation to an emergency application for leave to bring Judicial Review proceedings in respect of a decision of his Honour Judge Grant made earlier today. His Honour Judge Grant heard an ex parte application for an order that two named individuals would not harass the plaintiff. He decided that the application should be on notice to those individuals, rather than by way of an ex parte application. He declined to make an ex parte order and he adjourned the application to permit the plaintiff to put the two named individuals on notice. This emergency application has been brought at considerable public expense. The applicant is legally aided, the Northern Ireland Court Service is the proposed respondent and having been put on notice of the application, has attended this hearing by its legal representative. This court has been convened especially to hear the application.

[2] There are a number of fundamental problems with the application for judicial review including that the plaintiff could have appealed the refusal to grant an ex parte order. Accordingly on that ground and that ground alone I refuse leave to bring a judicial review application.

[3] Another fundamental problem is that there is no evidence before this court as to the exact threat to the applicant or to her children given that she is now residing some seven miles away from the two named individuals. The applicant has notified the police of her concerns and can indeed notify the police again of her concerns. There is, no doubt, disruption to the applicant and to her children having to wait for

an application to be heard on notice, but that has to be seen in the context of the important principle of law that both sides should be put on notice and both sides should be heard in relation to any application. If a party is put on notice the full picture emerges and there is the potential for instance if appropriate of cross assurances between them as to their future conduct. Not only is there no evidence on which to seek leave to apply for judicial review but also if judicial review is an appropriate remedy it could not conceivably be suggested that the decision was irrational or was outside the margin of appreciation allowed to any decision maker under Article 8 of the Convention.

[4] I refuse leave to apply for judicial review.

[5] I indicated during the hearing that if I did refuse leave to apply for judicial review I would deal with the matter by way of an appeal, provided there was an undertaking on behalf of the plaintiff to issue a notice of appeal. There has been such an undertaking. I turn now to deal with the appeal.

[6] The appropriate test to apply when deciding whether an ex parte order should be made is that set out by Lord Justice Hoffman in *Loseby v Newman* [1995] 2 FLR 754:

"An ex parte order should be made only when either there is no time to give the defendant notice to appear, or when there is reason to believe that the defendant, if given notice, would take action which would defeat the purpose of the order."

There was obviously time to give the two named individuals notice to appear. The only potential reason why the application could be brought ex parte is therefore whether the two named individuals, if given notice, would take action which would defeat the purpose of the order.

[7] On the evidence of the applicant, which has not been subjected to any opposing analysis, there is a prima facie case that the two named individuals have acted in an extremely unpleasant way and accordingly there is an inference that they may very well take some action if they were put on notice. However there is no evidence whatsoever that they would take such action when the applicant and her children are now temporarily living some seven miles away from them. Absent any evidence of that nature, then there is no reason whatsoever to hold that the purpose of the order would be defeated if they were put on notice. I dismiss the appeal.

[8] If the applicant is able to gather sufficient evidence to justify falling within the test as set out by Lord Justice Hoffman then she is at liberty to bring a further ex parte application before his Honour Judge Grant. That would have to be done on careful instructions obtained by her solicitor who should analyse what is necessary and set out the relevant evidence. No doubt the full circumstances of the present

accommodation of the applicant would have to be set out. For instance it is not clear whether she is on her own with her children or whether she is with others at that accommodation. If she is with others then what are their circumstances. Also consideration might have to be given to obtaining the advice of the police officer as to whether or not the very serving of a notice on the two named individuals would put both the applicant and her children at risk of unpleasant, unwarranted incidents of harassment despite living some seven miles away. Such evidence is wholly absent in this case at present. This case emphasises the need for careful analysis to inform the original application gathering together sufficient strength and quality of evidence rather than a rush to bring what is an inappropriate application for judicial review based on inadequate information. I direct that a copy of these remarks is made available to the Legal Services Commission who has responsibility for the public funds that are available by way of legal aid.